BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

SANDRA R. OLSON)
      Claimant)
VS.)
)   Docket No. 253,783
ST. FRANCIS XAVIER)
      Respondent)
AND)
)
CONTINENTAL WESTERN INSURANCE COMPANY)
      Insurance Carrier)

ORDER

Respondent and its insurance carrier appealed the May 19, 2000 preliminary hearing Order entered by Administrative Law Judge Bryce D. Benedict.

ISSUES

This is a claim for post-traumatic stress disorder that claimant developed after an attempted robbery that occurred while claimant was working for respondent. Judge Benedict determined that claimant sustained only minor physical injury but that she developed post-traumatic stress disorder as a result of the fear and psychological trauma from the attempted robbery itself. Therefore, the Judge found claimant's psychological injuries compensable under the Workers Compensation Act.

Respondent and its insurance carrier contend that Judge Benedict erred by finding the psychological injuries compensable when they were not directly traceable to a physical injury. Therefore, they request the Order be reversed. The Appeals Board is without benefit of claimant's argument and authorities as claimant did not file either a letter or a brief for this appeal.

Before addressing the issue of whether claimant's psychological injuries are related to injuries sustained in the attempted robbery, the Board must first address the question of whether it has jurisdiction to address the Judge's finding at this juncture of the proceeding.

The only issues before the Appeals Board on this review are:

1.   Does the Appeals Board have the jurisdiction to review a preliminary hearing finding that claimant's psychological injuries are compensable under the Workers Compensation Act as the result of a work-related incident?

2.   If so, did the Judge err in finding that claimant's psychological injuries were related to an attempted robbery that occurred while claimant was working for respondent?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date, the Appeals Board finds:

1.   The appeal should be dismissed.

2.   The argument that Judge Benedict has misapplied Kansas law and, therefore, has wrongfully awarded claimant benefits for a psychological injury is not reviewable in an appeal from a preliminary hearing order.   Not every alleged error in law or fact at the preliminary hearing level is subject to review. The Appeals Board's jurisdiction to review preliminary hearing orders is generally limited to the following:

(1) Did the worker sustain an accidental injury?

(2) Did the injury arise out of and in the course of employment?

(3) Did the worker provide timely notice and timely written claim?

(4) Is there any defense to the compensability of the claim?[1]

Additionally, the Board may also review those preliminary hearing orders in which the Judge exceeds his or her jurisdiction.[2]

3.   The issue of whether a psychological disorder is compensable under the Workers Compensation Act is a question involving the nature and extent of injury, which the Judge has the jurisdiction to decide at a preliminary hearing. And the jurisdiction to decide that issue is not dependent upon whether the Judge decides the issue rightly or wrongly. Because the issue is not one of those enumerated in the preliminary hearing statute as listed above, the propriety of finding claimant's psychological injuries compensable is not reviewable at this juncture of the proceeding.

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[1]   K.S.A. 1999 Supp. 44-534a(a)(2).

[2]   K.S.A. 1999 Supp. 44-551(b)(2)(A).

4.   As provided by the Workers Compensation Act, preliminary hearing findings are not final but subject to modification upon a full hearing of the claim.[3]

        WHEREFORE, the Appeals Board dismisses the appeal of the May 19, 2000 preliminary hearing Order entered by Judge Benedict.

        IT IS SO ORDERED.

        Dated this _____ day of July 2000.

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                    BOARD MEMBER

c: George H. Pearson, Topeka, KS
        Mark A. Buck, Topeka, KS
        Bryce D. Benedict, Administrative Law Judge
        Philip S. Harness, Director

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[3] K.S.A. 1999 Supp. 44-534a(a)(2).